Filed 12/29/04 In re Jade B. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JADE B. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. ELLEN B. et al., Defendants and Appellants.	G033893 (Super. Ct. Nos. DP005797, DP005798 DP005799, DP005800) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant Ellen B.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant David B.

Benjamin P. de Mayo, County Counsel, and Ward Brady, Deputy County Counsel, for Plaintiff and Respondent.

* * *

David and Ellen B. appeal the juvenile court's order continuing their daughters, Jade and Caralee, under a program of long-term foster care, and sons, Austin and Derek, under a program of family maintenance. (Welf. & Inst. Code, §§ 366.21, 366.22 and 364; all further statutory references are to this code unless otherwise specified.) The father argues the juvenile court had no jurisdiction over Derek because the allegations in the sustained petition omitted any reference to him. In addition, both parents challenge the sufficiency of the evidence to support the court's refusal to terminate jurisdiction over the children and contend Orange County Social Services Agency (SSA) failed to provide reasonable reunification services. They also contend the court denied them due process of law when it suspended testimony and "ordered" the parties to settle. We conclude the parents' contentions are without merit and therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The parents adopted all four children, Jade (age 14), Austin (age 12), Caralee (age 11), and Derek (age 9), from the Iowa Department of Human Services. In the process of adopting Caralee and Derek, they received extensive parent-education services for special needs children. The family moved from Iowa to Orange County in July 2000.

SSA placed the children into protective custody on November 30, 2001, after it discovered Austin had bruises on his right jaw and under his right ear. Austin related his father struck him on the jaw after the boy separated from his mother in a store earlier that day. Caralee reported father lifted her above his head and threw her to the ground for not completing her homework assignment.

This was the family's second contact with SSA. In February 2001, a social worker filed a child abuse report alleging Caralee sustained 10 bruises on her left arm when mother pinched her. SSA found the physical abuse allegations to be inconclusive and closed the case. Two previous child abuse allegations in Iowa similarly proved unsubstantiated.

SSA alleged the following in its amended petition: the parents confined Jade, Caralee, and Austin in the laundry room and on one occasion confined Austin in the garage; the mother taped Jade's mouth; the parents used excessive force in striking Jade, Caralee, and Austin on their bare buttocks; the mother pinched and/or grabbed Caralee as an inappropriate means of discipline; the father slapped Austin with an open hand, bruising the right side of Austin's face, inner and outer portions of his right ear, and inner portion of his left ear; and, on at least two occasions, the parents humiliated Austin by causing him to wear Caralee's pink jacket to school and to use a broken lunch box.

The parents submitted on the allegations in the amended petition. The court found jurisdiction under section 300, subdivisions (a), (b), and (c), declared the children dependents of the court, and found there was a substantial risk of detriment to their physical or emotional well being if they were returned to parental custody. The court vested custody of the children with SSA for suitable placement and provided both parents with reunification services. The parents faced criminal charges for child abuse based on the facts underlying the petition.

SSA arranged extensive counseling and parenting services for the father and mother, who were lauded by their therapists and instructors for their progress in many areas. The therapist hired by the parents, Dr. Steve Rockman, supported reunification and did not believe the children should have been removed from the home. The father's therapist, Thomas Bell, also provided favorable reports, but voiced concerns the father did not empathize with his children regarding their ordeal. Another concern involved the parents' denial, in front of the children and others, of the severity of the abuse. The father admitted to minor parenting mistakes, but firmly maintained he never intentionally endangered the children. He and the mother generally shifted blame to the children, making a lay diagnosis they suffered from "Reactive Attachment Disorders" (RAD) caused by traumatic pre-adoption experiences, which led them to fabricate abuse. The private therapist retained by the parents to evaluate Austin concluded he suffered from an attention deficit and hyperactivity disorder, not RAD.

The mother's therapist, Susan Wojtkiewiez, reported the mother advanced from a defensive and confrontational posture towards taking more responsibility for her past actions. Due to the mother's passive nature, however, the father and even Jade tended to "'run over her.'" The parenting class instructors reported the parents were participating and improving. Bell recommended conjoint therapy for all four children, but Wojtkiewiez only recommended it for the boys. The parents began conjoint therapy with Austin and Derek, but the girls' therapist forecast a poor prognosis because the father and mother refused to acknowledge the abuse — a prerequisite to productive family sessions because, "otherwise, the children will be made to feel like liars." Contrary to the father's assertion on appeal, no therapist required the parents to admit to abuse that did not occur, or to abusive acts not alleged in the sustained petition.

The girls' therapist reported special concerns regarding Caralee, who "remain[ed] too fragile emotionally to cope with the demands that conjoint therapy would place on her." Caralee was just "beginning to feel comfortable with her parents, as exhibited by her positive visitations," and "[t]o push the child too soon could irreparably damage the progress the child has made." Caralee pointedly refused to participate in conjoint therapy, expressing "some fear of family therapy" due to a prior negative experience. Jade ventured to attend the sessions, but became incensed when the parents "stated that nothing ever happened."

After an initial placement with the maternal grandparents, Jade returned to Orangewood Children's Home because of her behavioral problems. She declined to participate in conjoint therapy, was often argumentative, aggressive, profane, and defiant, and demonstrated homicidal and suicidal ideations. Nevertheless, she excelled academically, achieving A's and B's. She ran away from another placement but voluntarily returned after three days. Jade was diagnosed with a depressive disorder based on test results revealing low self-esteem, irritability, anxiety, thoughts of suicide, and a reported history of physical abuse and neglect. A regimen of medication helped reduce her aggression. By September 2003, her relationship with her parents had improved during visits, but she harbored anger and resentment toward them and remained

adamant about not returning home. Her resentment increased when she learned her parents were considering sending her to a residential placement in Utah if they regained custody of her. Jade refused to attend conjoint therapy after December 2003, claiming the therapist declined to support her when the father verbally attacked her. The parents did not attempt to visit Jade between October 2003 and the 18-month review in March 2004. The last time they saw her was during their final conjoint therapy session on December 9, 2003.

Caralee was diagnosed with an acute stress disorder. She alleged her parents twice inflicted head wounds to her, once from banging her head on the garage door and the other from being thrown down the stairs. She expressed fear of the father and the mother, and was ambivalent about maintaining contact with them. Her therapist observed, "'This kid is terrified of her parents.'" During reunification services, her anger and resentment increased, and by September 2002, she joined Jade in refusing to return home. Caralee believed her parents still posed danger to her brothers, fearing the boys "will get beat up again."

Through September 2003, Caralee was regularly acting out in placement, including cutting herself. In October 2003, she and the parents started conjoint therapy, but the sessions ended in January 2004 when the mother refused to submit to a Minnesota Multiphasic Personality Inventory (MMPI) psychological evaluation. Caralee was still firmly against returning home by the March 2004 hearings.

Austin, on the other hand, preferred to return home instead of continuing in foster placement despite, according to his sisters, being the most abused of the four children. A neuropsychiatrist diagnosed him with attention-deficit hyperactivity disorder and prescribed medication to treat his learning disability. Austin performed well in school after several changes were made based on his individualized education plan. But school staff observed he often arrived at school without an adequate lunch, asked other children for food, and was not provided a meal card, although his brother possessed one. He often appeared dirty and disheveled. The parents claimed Austin was allowed to

make his own lunches and he denied being hungry. The parents also allowed him to choose his own clothing, which explained his untidiness.

Derek was not the subject of any abuse allegations, but exhibited developmental and behavioral problems. He was enuretic and openly and excessively defiant. By May 2003, SSA reported his behavioral problems had diminished. Derek enjoyed visiting his parents and wanted to return home.

After being placed at home under SSA's supervision, Derek's school raised concerns about his excessive absences — up to three times a week. The mother stated she merely followed the school's request to remove and clean him after he wet himself, but the school denied her account, since all the absences were signed off as appointments. Following testing of the child, the parents enrolled Derek in a school specializing in language and speech therapy, where he responded well.

At the October 2002 review, the court granted a 60-day trial home visit for the boys and continued reunification services for the girls. The scheduled review hearings were continued several times over the next year. In December 2002, Austin and Derek were returned to their parents' custody under a family maintenance program. A social worker who visited the home for eight weeks of in-home services reported favorably, but voiced concern over the mother's opinion the family was "in the system" because of "her daughter asking her teacher for money because her parents did not feed her," and her additional statement that she and the father "had tried to warn the school the child might lie and tell stories."

In November 2003, the father was convicted of one felony count of child abuse. (Pen. Code, § 273a, subd. (a).) Both parents were convicted of several misdemeanor counts of child abuse. (Pen. Code, § 273a, subd. (b).)[1] Their sentencing was pending at the time of the March 2004 review hearing.

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[1] We take judicial notice (Evid. Code, §§ 452, 459) of court documents showing a new trial was ordered for the mother on all counts and that the charges against her were eventually dismissed in September 2004, long after the March 24, 2004 decision under review here.

SSA recommended long-term foster care and termination of reunification services for Jade and Caralee and to continued parental custody of Austin and Derek under a program of family maintenance. The parents contested the recommendation, arguing both girls should be returned home and jurisdiction over the boys should be terminated. The parents proposed to call 50 witnesses at the review hearing, which began on March 9, 2004.

Jade testified she wanted to sever all ties with her parents, even if this meant she would live in a group home until she was 18. She did not believe they had changed and feared they would hurt her. Caralee echoed her sister's feelings, testifying she did not feel safe with her parents and there was nothing anyone could do to alter her opinion. The father testified he wanted the girls returned to his custody. Should the court order their return, he would place them in an out-of-state residential facility to ease their transition home. The mother also testified, and supported father's plan to place the girls in a residential facility.

At this point, the court interjected the following comments: "I am absolutely beside myself, because I don't have anything to decide here except for something on the periphery, from what I understand. [¶] Neither parent has said they're able to take the children into their home. Father says that at a minimum there would have to be a transition. Mother says there has to be specialized treatment first and then conjoint therapy has to be kept in place. [¶] There is absolutely a substantial risk of detriment, certainly emotionally and maybe physically, for either one of the girls to go home to the parents, who are going to simply ship them off out of state, uproot them, to some treatment program. That is not even looking at any issue in this case. [¶] Secondly, there hasn't been the therapy. [¶] Thirdly, the children don't want to go home. [¶] Fourthly, we really haven't had a very good visitation program. [¶] Fifthly, the parents have expressed no ability to really handle these problems within the framework of their own home. And I could go on and on and on. [¶] What I don't understand is what in the name of anything is anybody asking for here. [¶] If the parents are seriously asking me for a return of the two girls to them, it's belied by their positions; it's

impossible, it's absolutely impossible for me to return these two girls to you two parents under these conditions — zero chance."

The court discussed several different dispositions it was considering, but informed the parties it "would be inclined to work with this family" so the parents could reunite with the girls.[2] The court, however, urged the parents to dispense with a lengthy hearing if their only goal was to obtain immediate custody of the girls: "Now I'm willing to spend some time here to get down the mountain. But if the request is going to be: Return the children so that I can send these children off to some place out of state, it's absolutely not going to happen — zero chance, zero chance. It's ludicrous. So I'm just wondering, what are we doing here?"

The court urged the parties to "see the bigger picture" and ordered them back the following day for settlement discussions.

The following day, on March 24, 2004, the court announced the parties had reached a settlement and made the following orders: The court terminated reunification services for Jade and Caralee, who were to remain in foster care with conjoint therapy and monitored parental visitation. The court continued the program of family maintenance for Austin and Derek and scheduled a six-moth review.

Both parents filed appeals challenging the juvenile court's orders.[3]

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[2] The court explained: "I probably would be inclined to work with this family, including having this case in my courtroom every month for a progress review, making sure the therapy is with somebody whom we bring in here and we sort of interview first, making sure it's a therapist that the parents and this court thinks is going to be effective and work on the therapy, work on these individual issues with each child — the girls I'm talking about — and also work on different kinds of visitation plans for each child in the home or, however you do it, with the parents."

[3] Over the parents' opposition, SSA requests that we take judicial notice of an interim status report filed by the agency with the court on July 22, 2004. Similarly, father requests we take judicial notice of a Court Appointed Special Advocate's court report of the same date regarding Caralee. Neither of these reports were before the juvenile court in March 2004 when it made the rulings now challenged on appeal; we decline to grant either request for judicial notice. (See *In re Zeth S.* (2003) 31 Cal.4th

II

DISCUSSION

Parents Did Not Waive Their Right to Appeal

SSA argues the parents waived their appellate rights by reaching a settlement agreement and consenting to the court's disposition. We disagree.

SSA relies on *In re Precious J.* (1996) 42 Cal.App.4th 1463. There, the court concluded the mother waived her right to complain services were inadequate because "the terms of the reunification plan were consistent with [the parent's] wishes as expressed by her counsel at the dispositional hearing. Having consented to the plan, [the parent] cannot now complain." (*Id.* at p. 1476.)

Here, in contrast to *In re Precious J.*, the parents objected to the court's disposition. True, the court announced the parties had reached a settlement. But while making certain findings and entering the orders, counsel for the parents interjected, "It's the parents wish and belief that the girls be returned to their care and custody forthwith." As counsel pressed the point, the court interrupted, stating: "I know their position. I am not taking argument. I don't want the matter argued. If you want to tell me their position — I know they want both children returned." Curiously, the court responded it was still "thinking about" terminating jurisdiction over the boys, a statement at odds with a purported settlement of the issue. The parties waive their right to appeal only if the record unambiguously demonstrates they consented to the court's dispositional orders. (See *In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1209.) The colloquy quoted above casts doubt on whether the parents voluntarily relinquished their appellate rights. Under these circumstances, we conclude they did not waive these issues on appeal.

Challenge to Petition and Jurisdiction Concerning Derek

The father claims the absence of specific allegations in the petition concerning Derek preclude jurisdiction over him, a claim not raised below. In

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396, 405 [appellate court reviews correctness of judgment as of time of rendition on record of matters before trial court].)

dependency proceedings, a failure to demur to defective pleadings waives the defect. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 328.) Moreover, the parents' failure to appeal the jurisdictional findings at the disposition stage precludes an attack now. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150.) In any event, were we to reach the issue, the father's assertion is factually incorrect. The petition specifically names "Derek" as "a minor who comes under Welfare and Institutions Code § 300 . . . ."

The Trial Court Did Not Err in Continuing Jurisdiction Over Austin and Derek

The parents argue the juvenile court erred when it refused to terminate jurisdiction over Austin and Derek. "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary." (§ 364, subd. (b).) "[C]ontinuing jurisdiction over the minor is not dependent solely on whether a parent is capable of exercising proper and effective parental control over him but on whether the best interest of the child is served by freeing him from further supervision." (*In re Francecisco* (1971) 16 Cal.App.3d 310, 314.) We review a juvenile court's findings pursuant to section 364 under the substantial evidence test. (*In re N.S.* (2002) 97 Cal.App.4th 167, 172.)

The court found termination of jurisdiction over the boys would not be in their best interests. Although the court lauded the parents' efforts and progress in some areas, it was concerned the conditions necessitating placement still existed. For example, Austin went to school hungry, without lunch or a meal card, and asked other children for food. In light of the parents' history of inappropriate disciplinary measures, as reflected

in the sustained petition, the court could reasonably conclude the parents were withholding food to punish the child or, at the very least, failed to meet his basic nutritional needs. Moreover, Austin often arrived at school unkempt and wearing soiled clothing, set up for ridicule again just as he was in the broken lunchbox and pink jacket episodes in the sustained petition. On one occasion, after the parents missed Austin's graduation despite a flyer and phone calls from the school, the father burst into anger on learning the school staff had purchased appropriate clothing for Austin, who had shown up in shorts and was embarrassed. Austin cringed in fear and humiliation at the scene his father created.

Another red flag was the mother's insistence that Derek's absences were at the school's behest for clothing changes, whereas in each instance she herself had checked him out of class for appointments. Similarly, while the parents admitted the conduct underlying the sustained petition to their individual therapists, they told Jade in conjoint therapy that "'nothing ever happened,'" and told the in-home social worker that the basis for dependency rested solely on her "daughter asking her teacher for money because her parents did not feed her." Because of the parents' tendency to revise history so that, as one therapist warned, "'the children will be made to feel like liars,'" the court could reasonably conclude the parents had not yet succeeded in putting the children's interests ahead of their own.

Additionally, the court voiced concern about the lack of sibling visitations and, in part, maintained jurisdiction in order to enforce visitation orders necessary "to get th[e] family back together." The parents acquiesced in what they claimed was the boys' reluctance to visit their sisters, in violation of court visitation orders. Of further concern, the father testified he might consider sending Austin out of state to address behavioral problems, but only as a last resort. Maintaining an eye on Derek in light of the abuse of Austin and his sisters, preserving sibling relationships, and preventing the parents from

placing any of the children beyond its reach, were adequate reasons to maintain jurisdiction.[4] (§ 319; *In re Jason L.* (1990) 222 Cal.App.3d 1207, 1215.)

In addition to the foregoing, the court could continue supervision to learn whether the parents would receive jail terms for abusing their children. Of course, incarceration alone is not a basis for continued supervision. But the court was justifiably reluctant to abandon the boys on the eve of sentencing, an inevitably difficult period, and separate them from their therapists. Consequently, the court did not err in continuing jurisdiction.[5]

The Trial Court Did Not Err in Continuing Jurisdiction Over Jade and Caralee

The parents also argue the trial court erred by continuing jurisdiction over Jade and Caralee. At the permanency review hearing following the 18-month review,

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[4] At oral argument, father's counsel argued the parents should be as free as parents not embroiled in the dependency system to place their children where they believe their needs will best be met, even out of state. The proposition fails the barest scrutiny. Here, for example, after the boys had been returned to their custody, the parents exhibited an alarming tendency to secrete the children and avoid contact with SSA. On one occasion after a therapist could not reach the family for several days, even at an agreed time by telephone, and no calls were returned, a social worker attempted to visit the residence. "As she approached the home she saw an adult and two children in the garage. As she walked up to the front door the garage door was closed. She proceeded to knock and ring the doorbell for approximately twenty minutes. No one answered. She then went to her car to telephone the home . . . . After leaving a message she again knocked at the door," to no avail. Soon thereafter, another worker went to the residence, said "hello" to the mother outside the residence, only to see her retreat with Austin into the house, and fail to answer the door. Officers responding to the worker's call for a welfare check surmised the father was also home because two cars were in the garage, but the parents ignored repeated knocking and hung up when the police telephoned. In view of this behavior, the court's anxiety regarding the parents' plans for the children was not unreasonable.

[5] We grant father's request to take judicial notice of the fact the juvenile court terminated jurisdiction over Austin and Derek on November 2, 2004, during the pendency of this appeal. (Evid. Code, §§ 452, 459.) But because no party suggests the court's interim jurisdictional finding over the boys was thus rendered moot, and because father urges us — without objection from SSA — to decide the matter, we have addressed the propriety of jurisdiction, as discussed above.

"[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).) If the child is not returned to the parent at the permanency review hearing, the court may order the child to remain in foster care if the child is not adoptable. (*Ibid.*) In determining "detriment," the juvenile court weighs all relevant factors in evaluating the "expected net harm to a child as the result of his or her return to parental custody." (*In re Cody W.* (1994) 31 Cal.App.4th 221, 227.) We determine whether substantial evidence supports the juvenile court's findings. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341.)

The court reasonably found the parents' intention to place Jade in an out-of-state treatment facility posed a substantial risk of emotional detriment. Jade's response supported the court's conclusion: "If they try to do that, I will take my sister and brothers, and run away!" The court emphasized the girls feared their parents and steadfastly opposed returning home, and noted the parents demonstrated an inability to "handle these problems within the framework of their own home." Based on Jade and Caralee's testimony, the court could reasonably conclude these girls so feared their parents that returning them would be detrimental to their emotional health. Even when visits went well, when asked if she wanted to go home, Caralee responded "No!" and "Never go home" and emphatically refused even unmonitored visits. Jade expressed similar sentiments. The court recognized the parents had gained some understanding of how their actions harmed their children and appeared genuinely motivated to provide a loving home. But the fact remained the girls distrusted their parents and were not ready to be reunited. As elaborated below, the parents made no effort to see Jade for several months, and she responded in kind by telling staff that, "if her parents show up, she will refuse to see them." To force the girls to return prematurely risked further estrangement and increasing their sense of vulnerability. Ample evidence supports the court's decision to continue jurisdiction over Jade and Caralee.

SSA Provided Reasonable Reunification Services

Both parents complain SSA did not provide reasonable reunification services. The adequacy of SSA's reunification efforts is judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) SSA's duty is to identify the problems leading to the loss of custody, offer services designed to remedy those problems, maintain reasonable contact with the parents, and make reasonable efforts to assist the parents in areas where compliance proves difficult. (*Id.* at p. 1165.) The trial court's finding reasonable reunification services were offered or provided is subject to review for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

The parents' main grievances are too few conjoint counseling sessions and lack of visitation with the girls. But the parents refused to visit the girls at their group home for a time, claiming it interfered with their ability to oversee the boys' homework assignments, and the girls declined off-grounds visits at an intermediate location because the parents had not earned their trust. Stating that "if the children want to visit they will come," the parents refused SSA's suggestion that one parent take homework duty while the other visited on an alternating basis. And the group home reported the parents used to call frequently to inquire how Jade and Caralee were doing, but their calls and visits declined over several months. SSA's report in March 2004 disclosed that "[t]he parents have not brought the boys to the Court ordered sibling visits since November 7, 2003," a period of more than three months. During testimony at the March 2004 hearings, the mother acknowledged not visiting or calling Jade since October 2003 because it would not be "productive." The record shows the parents' refusal to visit coincided with Jade complaining to them that they favored Derek over Austin. In November 2003, the parents stopped bringing Austin and Derek to see her, and the social worker "almost had to plead with the" father and the mother to send Jade a Christmas card. The parents cannot pin blame on SSA for failing to provide visitation they themselves rejected.

The parents incorrectly assert SSA unreasonably denied them conjoint therapy after the mother refused to submit to an MMPI evaluation in January 2004. The

mother's refusal continued a trend of sabotaging conjoint sessions when the opportunity was provided. For example, the parents previously cancelled appointments after an initial session with Dr. Steven Meyer, claiming he voiced skepticism at the possibility of conjoint therapy with Caralee. Meyer evinced surprise at the abrupt cancellation since, in his words, "I felt I communicated openness to [family sessions] should the preliminary sessions with the [parents] go well." At trial, the parents claimed they feared any statements made in conjoint therapy would be used against them in the criminal proceedings, but when advised of this possibility by Meyer, they waived confidentiality with an air of unconcern because they had been "'through this before.'" The parents also raised work schedule and traffic objections to seeing Meyer, but Meyer had agreed to stay late at his office to accommodate them, which they refused. Put simply, in this and other examples, far from showing unreasonable services, the record supports the social worker's contention that the "parents appeared to put catching the Social Services Agency in poor case management above meeting the needs of their children."

The parents fault SSA for doubting the effectiveness of conjoint therapy unless the parents accepted responsibility for their acts. But it was the girls' therapist, not SSA, who forecast a poor prognosis if the father and mother refused to acknowledge the abuse — a prerequisite to productive family sessions because, "otherwise, the children will be made to feel like liars." The assessment proved only too true, for when the parents claimed in a conjoint session with Jade that "nothing ever happened," family therapy essentially came to an end. The juvenile court could credit Jade's account of the closed-door sitting, given documented statements from the mother that the dependency arose not from any abuse, but from "her daughter asking her teacher for money because her parents did not feed her."

The father states SSA "continue[d] to hold the parents' feet to the fire until they 'confess' to acts which they did not commit and which were not bases for the sustained petition." Yet nothing in the record reflects the parents were required to "confess" to anything. Unlike *In re Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1752, there is no evidence of a "confession dilemma" in which an innocent parent

is required to admit untrue allegations in order to reunify. To the contrary, the parents admitted the petition's allegations to their therapists, but according to professional norms — not SSA's dictates — successful conjoint therapy required the parents to accept responsibility in the presence of the children, which they failed to do. Worse, they exacerbated the situation with their direct denial to Jade that *any* basis existed for the sustained petition. In short, SSA could not by itself overcome every roadblock erected by the parents.

The father relies on *In re Alvin R.* (2003) 108 Cal.App.4th 962, which held the Department of Children and Family Services (Department) failed to take timely steps to have the father and son begin conjoint therapy. (*Id.* at pp. 972-974.) There, the Department unreasonably delayed eight individual counseling sessions for the child, a necessary condition before conjoint therapy could begin. (*Id.* at p. 973.) Here, in contrast, SSA offered virtually unlimited individual therapy to the parents and children through a squadron of counselors attempting to ready them for conjoint sessions. Services must be "reasonable," not perfect or ideal. (§ 366.21, subd. (e); *Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969 ["standard is not whether [the services] were the best that might have been provided, but whether they were reasonable under the circumstances"].) Substantial evidence supports the trial court's findings SSA provided reasonable reunification services. Indeed, the conjoint counseling issue appears to be moot because SSA recommended continued sessions beyond the long-elapsed reunification period, and the court authorized conjoint therapy with a provider approved by the parents and still further county funding "if father's insurance does not cover it." In light of these efforts, the parents' attack is without merit.

The Trial Court Did Not Deny the Parents Due Process of Law When It Suspended Testimony and Ordered a Settlement Conference

The parents maintain their due process rights were violated when the court suspended father's testimony in order to hear from mother, and then interrupted mother's testimony to order a settlement conference, which denied them the right to present relevant testimony from the 50 witnesses they planned to call. "[D]ue process guarantees

apply to dependency proceedings. [Citations.] Parties to such proceedings have a due process right to confront and cross-examine witnesses, at least at the jurisdictional phase. [Citations.] The essence of due process is fairness in the procedure employed; a meaningful hearing, one including the right to confront and cross-examine witnesses, is an essential aspect of that procedure. [Citation.] But due process also is a flexible concept, whose application depends on the circumstances and the balancing of various factors. [Citations.]" (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751.) For the reasons that follow, we discern no due process violation.

As mentioned above, the parents contend the court ordered them to reach a settlement, and foreclosed further testimony. Our review of the record shows otherwise. The court ordered the parties to *attempt* settlement. This, of course, does not offend due process.

Nor did the court state it would not hear further testimony. True, the court understandably expressed exasperation with the prospect of hearing 50 additional witnesses after Jade and Caralee's testimony described how they feared and distrusted their parents, and unequivocally opposed returning home. The court interrupted proceedings to inform the parties of its tentative impressions, describing in strong terms the court's reluctance to return the girls to their parents' custody. Undoubtedly, the court hoped this information would spur an agreement among the parties. But the court stated it was "willing to spend some time here to get down the mountain." And if the case did not resolve, the court facetiously declared it would endure the onslaught of 50 additional witnesses it doubted would alter the outcome: "I guess I will let out the line on the old reel and write my memoirs or something." Yet the parents made no effort to call any witness to the stand, let alone present an offer of proof as to the testimony each witness would give. We therefore have no way of knowing whether the testimony of these witnesses would have been relevant. """"The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few

judgments would stand the test of an appeal.' [Citations.]"' [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365, fn. 6.) In sum, parties who fall mute at the bar, abandoning a proffered opportunity — however slight — to sway the decision maker, cannot be heard to complain.

III

DISPOSITION

We affirm the juvenile court's orders continuing Jade and Caralee under a program of long-term foster care, and Austin and Derek under a program of family maintenance.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.